dinary use to which it put. *Held*, that where a sewer under the control of a city becomes obstructed by ordinary use, and an abutting owner's property is injured thereby, a presumption of negligence arises calling upon the defendant for an explanation, and upon failure to show that watchfulness and care had been exercised to keep the sewer in proper condition, a finding of negligence would be sustained.

This case is in accord with the majority of decisions which hold that when a sewer has been determined upon and is constructed, the duties of constructing it properly and keeping it in good condition and repair are maintained, and that negligence in the performance of those duties will render the city liable for damages resulting therefrom. *Mills* v. *City of Brooklyn*, 32 N. Y. 489; *Boston* v. *City of Syracuse*, 37 N. Y. 54; *Mayor* v. *Furze*, 3 Hill 612; *Horn* v. *Burnhoof*, Ct. Ap. Conn.

MUNICIPAL CORPORATIONS—SPECIAL ASSESSMENTS—CONSTITUTIONALITY—ZELURDER V. BARBER ASPHALT PAVING CO., 106 Fed. 103.—A statute, whereby municipal corporations are given the right to assess abutting property owners for the total cost of street improvements without any opportunity first being given for an examination into the question of benefits, is unconstitutional.

It has long been settled that municipalities may have the legal power conferred upon them to assess the cost of street improvements against the property located in the neighborhood of such improvements. *Ill. C. R. R. Co.* v. *Decatur*, 147 U. S. 190; *Banman* v. *Ross*, 167 U. S. 548. Though such assessments are a form of taxation, yet even there the power of the legislature is not extended so far that it may authorize the taking of property without benefit being conferred on those assessed. The present case follows closely and relies almost absolutely on *Village of Norwood* v. *Baker*, 172 U. S. 269.

NEGLIGENCE—DEATH OF HORSE—FRIGHT.—LEE V. CITY OF BURLINGTON, 85 N. W. 618 (Ia.).—The negligent operation of a street roller so frightened a horse that it dropped dead. *Held*, no recovery from the city.

This is an unusual case and involves a very nice point of law. It is a settled rule, as to human beings, that no recovery can be had for injuries resulting from fright, where no immediate personal injury is received. *Ewing* v. *Railroad Co.* (Pa. Sup.), 23 Atl. 340; *Spade* v. *Railroad Co.* (Mass.), 47 N. E. 88. The court considers the same rule to be applicable to animals.

RAILROADS—FIRES—BURDEN OF PROOF—IMPROVED APPLIANCES.—WHITE V. NEW YORK, P. & N. R. Co., 38 S. E. 180.—*Held*, when a fire is caused by sparks thrown from a locomotive, that if it appears that the company owning the locomotive has discharged its duty by providing and keeping in repair the most approved appliances for preventing the throwing of sparks, there could be no recovery for damages caused thereby.

Fire caused by sparks from a locomotive is *prima facie* evidence of negligence. *R. R.* v. *Rogers*, 76 Va. 457. The using and keeping in repair of approved appliances is sufficient to rebut the presumption of negligence. *Kimball* v. *Borden*, 44 S. E. 45.

WATERS AND WATER COURSES—DAMS—OVERFLOW—PRESCRIPTIVE RIGHT.—CHARNEY V. SHAWNO WATER POWER, &c., Co., 85 N. W. 507 (Wis.).—

Defendant bought a mill dam which had been constructed forty-eight years before. Plaintiff asks that damages caused to his land by flowing of the dam be assessed. *Held*, that though the dam was constructed across a navigable stream without authority from the legislature, a prescriptive right might have been acquired as against private owners, but since the injury done to the land of the plaintiff had not been as great during the entire prescriptive period as at the time the action was brought, no such prescriptive right had been acquired.

If this is law there are very few good prescriptive rights in existence. A nuisance arising from the pollution of a stream, in order to acquire a prescriptive right, would have to be maintained every day of the week and at all hours of night and day for the requisite period. We conceive the law to be that a nuisance acquires a prescriptive right against individuals when it has been brought about for the requisite period by a business operated in the *natural* and *usual* way to accomplish the ends for which it was established. If the twentieth season after the building of the dam was a dry one, this does not destroy the greater prescriptive right acquired during the first season, which may have been a wet one. Indeed, the substantial increase of injury may be actionable, but it does not take away the previously acquired right. See *Sherlock* v. *Louisville, &c., R. R. Co.*, 115 Ind. 22.

REIMBURSEMENT OF EXECUTORS.—IN RE MCKAY'S ESTATE, 68 N. Y. Sup. 925.—Executors in good faith paid off a mortgage when, by 1 *Rev. St.* p. 749, sec. 4, the land should have passed to the legatees subject to the incumbrance. *Held*, that the executors were entitled to reimbursement out of any funds held by them or the testamentary trustees, for the benefit of the residuary legatee.

This seems to be the first case on this point of law under the statute.

NEW TRIAL—JUDGMENT BY DEFAULT—MERITORIOUS DEFENSE—NEGLIGENCE OF COUNSEL.—DENSERAW V. SAILLANT, 48 Atl. 668 (R. I.).—Defendant showed by affidavit that he had a probable defense, but that through the negligence of his counsel in failing to appear, judgment by default was rendered against him. *Held*, defendant was entitled to a new trial.

It is not the policy of courts to grant a new trial under such circumstances. *Donnelly* v. *McAdams*, 13 Atl. 108. In New Jersey by statute (2 *Gen. St.*, p. 2597, sec. 324) a judgment will be opened where injury results to one through the neglect or mistake of his attorney in failing to file a plea.

NEWSPAPERS—REFUSAL TO SELL TO DEALERS—RIGHT OF ACTION.—COLLINS V. AMERICAN NEWS CO., 63 N. Y. Supp. 638.—A complaint in an action by a newsdealer, alleging that an association of publishers of certain New York papers had agreed to cut off his supply unless he desisted from distributing, with the newspapers, circulars calculated to make him a competitor with the newspapers in the business of advertising, does not constitute a cause of action.

From the evidence it would seem that defendants do not propose to interfere with plaintiff's business, but merely refuse to aid him in injuring their own advertising business. No one can be compelled to sell his goods or labor to one with whom he does not wish to deal, merely because his refusal to do so may cause loss to him who wants them. *Allen* v. *Flood* (1898), App. Cas. 1; *Reynolds* v. *Associations*, 63 N. Y. Supp. 303.